IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.509 OF 2007

Jalaludin Abdul Karim Shaikh .. Petitioner.

Versus

1. Dy.Commissioner of Police
   Zone IV Ulhasnagar, Dist.Thane
2. The State of Maharashtra .. Respondents.

Mr.S.R.Chitnis, Sr.Counsel for the petitioner.
Mrs.M.M.Deshmukh, A.P.P. for the respondents.

CORAM : J.H.BHATIA, J.

DATE : 30TH MARCH, 2007.

P.C.:

1. The petitioner has preferred an appeal before the Government of Maharashtra challenging the order of externment passed by Dy.Commissioner of Police, Zone IV, Ulhasnagar on 6th February, 2007 externing the petitioner from local limits of Thane, Mumbai, Mumbai Suburban and Raigad. He has also made an application before the Appellate Authority for stay to the externment order. However, that application came to be rejected on 12th

March, 2007. Therefore, the petitioner has filed this petition seeking stay to the externment order.

2. Heard Mr.Chitnis, learned Senior Counsel for the petitioner and Mrs.M.M.Deshmukh, learned A.P.P. for the respondents.

3. Mr.Chitnis has taken me through number of authorities of this High Court about different aspects of the externment orders and particularly, he referred to the authority of Division Bench in **Shamkumar Arjun Dalvi v/s. The State of Maharashtra and Anr., 1988 (1) Bom. C.R. 131.** In that case, the State Government had declined to stay the order of externment pending the appeal. The Division Bench of this Court observed as follows : -

> "Now, when an appeal is provided by the statute and the same is filed, it is then, in a matter of externment, but just and fair that pending the appeal, the externment is stayed. Refusal in that behalf may, in a given case, as well render the appeal itself infructuous. We are informed that stay is not granted as a matter of policy. If that is so, it is

> rather unfortunate. It tends to defeat justice. The need for externment should be balanced with the requirement to be just, fair and reasonable to the externee. If a life convict can be released on bail or a preventive detenue on parole or one accused of serious economic offence granted even anticipatory bail, what is so extraordinary qua an externee that in no case he should be given stay. Besides, discretion vested in an appellate authority must be exercised not blindly as a matter of policy but rationally depending upon the facts and facts of each case. In all the circumstances, we are inclined to grant stay pending the appeal with direction to decide the same expeditiously."

4. Mr.Chitnis contended that in view of this observation of this Court, it is necessary to stay the externment order pending the appeal.

5. Mr.Chitnis pointed out that relying on this authority in a group of petitions (W.P.2411 of 2006 and

others), learned Single Judge of this Court **(Coram: Smt.Ranjana Desai, J)** followed the said authority and stayed the externment order on certain conditions. The learned senior counsel contended that in view of the Division Bench authority as well as the learned Single Judge authority in the group of writ petitions, the externment order has to be stayed pending the disposal of the appeal before the State Government. Mrs.Deshmukh, learned A.P.P. contended that as per the written information provided to her, the appeal is fixed for final hearing before the Appellate Authority on 18th April, 2007 and, therefore, no inconvenience or hardship will be caused to the petitioner if the order is not stayed. Further, she contends that taking into consideration the facts of the present case, it will not be desirable and in the interest of justice to stay the externment order.

6. In the case of **Shamkumar (supra)**, the Division Bench mainly emphasized on the facts of each and every case, when it observed : -

> "Besides, discretion vested in the appellate authority must be exercised not blindly as a matter of policy but rationally depending upon the facts of

each case".

7. In view of the facts of the particular case before the Division Bench, their Lordships held that the Appellate Authority was not right in staying the externment order and the petition was allowed. In the group of writ petitions i.e. W.P. No.2411 of 2006 and others and the judgement in group of petitions, the facts involved in that petitions are not mentioned in the order. However, Mr.Chitnis informs that against each of the petitioners, there were about 5 matters of different nature including an offence u/s.307 of I.P.C.

8. In the present case, after careful perusal of the notice which was issued by the Asst.Commissioner of Police, I find that in the year 2002, an offence u/s.302, 120 B etc. of I.P.C. and Sec.3, 25 & 27 of Arms Act was registered and an offence u/s.452, 324, 504, 506 (2) 427 of I.P.C. was also registered. Besides these two main offences, number of non-cognizable offences are registered u/s.504 & 506 of I.P.C. and the said notice also shows that the statements of some persons recorded in camera also revealed that the petitioner was involved in threatening and extortions. In Para 1(a) and (b) of the externment order, details have been given about the nature

of the petitioner’s activities.

> "(a) that he and his associates created reign of the terror in vicinity by voluntarily causing hurt, voluntarily causing hurt by dangerous weapons or means, giving threats of dire consequences, assaults to the residents, businessmen, servicemen & common people of the aforesaid localities and areas, at the point of deadly weapons i.e. sword, hockey stick, wooden stick, committing murder. Suspecting them to be giving information/complaint/deposition to the police about his illegal activities, which are offences punishable under Chapter XVI of the Indian Penal Code.
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> (b) that he & his said associates created reign of terror in vicinity by giving threats & extorting money, giving threats of dire consequences, committing robbery, house trespass to committing offences, causing damage to the property, in the aforesaid localities and areas,

which are offences punishable under Chapter XVI of the Indian Penal Code."

9. Taking into consideration that the appeal is pending before the State Government, it will not be desirable to make any comments about the correctness or otherwise of the externment order but suffice to state that taking into consideration serious allegations and number of cases registered against the present petitioner, I find that it is not a fit case to stay the externment order.

10. For the aforesaid reasons, the petition stands dismissed.

(J.H. BHATIA, J.)